

Before the
Federal Communications Commissions
Washington, D.C.

RECEIVED

JUN 27 1997

In the Matter of

)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

)

Amendment of Rules and
Policies Governing Pole
Attachments

)

CS Docket No. 97-98

)

)

**INITIAL COMMENTS OF
THE AMERITECH OPERATING COMPANIES**

INTRODUCTION

On March 14, 1997, the Commission issued its Notice of Proposed Rule Making ("Notice") regarding its rules with respect to the maximum just and reasonable rates a utility may charge for attachments to poles, ducts, conduits and rights-of-way. In response to the Notice, the Ameritech Operating Companies¹ (collectively, "Ameritech") respectfully submit the following comments.

A. The Ameritech Operating Companies Have Not Encountered the Negative Rate Problem Raised in the Southwestern Bell Petition.

The Commission seeks comment on issues raised in a petition filed by Southwestern Bell ("SWB") regarding potential negative rates arising out of the application of the Commission's net investment based rate formula for pole attachments.² No Ameritech Operating Company has yet encountered the problem described by SWB in its petition.

¹ The Ameritech Operating Companies are Ameritech Illinois (a/k/a Illinois Bell Telephone Company), Ameritech Indiana (a/k/a Indiana Bell Telephone Company), Ameritech Michigan (a/k/a Michigan Bell Telephone Company), Ameritech Ohio (a/k/a The Ohio Bell Telephone Company), and Wisconsin Bell, Inc., (d/b/a Ameritech Wisconsin).

² Notice, pars. 17, 21-25.

Barring changes in current pole plant investment patterns, the accumulated depreciation balances of the Ameritech Operating Companies are predicted to exceed gross pole investments³ within the next 3 to 8 years. However, pole plant investment might increase if, as a result of changes in the competitive landscape spurred by the 1996 Act⁴, facility based competitors create demands for pole attachments necessitating pole replacements. This currently unquantifiable demand could extend the period before which the Ameritech Operating Companies' net pole plant investment becomes negative, or may avoid such a condition altogether.

The Notice also seeks comment on current rate levels and their relationship to the maximum rate under the federal formula.⁵ The Ameritech Operating Companies, in their interconnection agreements, statements of generally available terms and proposed tariffs, offer pole attachments at rates computed based upon the Commission's current formula.

B. Changes to the Current Rebuttable Presumptions Regarding Pole Height and Usable Space Are Not Warranted.

In a Whitepaper⁶ submitted to the Commission, a group of electric utilities proposes changes to the presumptions in the current pole attachment rate formula for the average pole height and usable space on a pole, and urges exclusion of 30 foot poles from

³ The view expressed in paragraph 26 of the Notice -- that a situation where the depreciation reserve for poles exceeds gross pole investment represents "over-recovery" -- is a mischaracterization. The accrual of amounts to recover the eventual costs of removing and disposing of a pole, as well as recovery of the initial investment in the pole, are governed by the Commission's rules and recognize the volatility of expenses which would occur, and indeed did occur, absent inclusion of those costs in accruals. In fact, there is no "over-recovery" for an asset account unless and until the depreciation reserve exceeds the initial investment adjusted for expected net salvage. Consequently, there is no windfall to the pole owner, as implied in the Notice.

⁴ The Telecommunications Act of 1996.

⁵ Notice, par. 21.

⁶ "Just and Reasonable Rates and Charges for Pole Attachments: The Utility Perspective," filed August 28, 1996 ("Whitepaper").

bare pole cost calculations. The Commission seeks comments on the proposals detailed in the Whitepaper.⁷

1. Average Pole Height.

A change in the presumption regarding average pole height from 37.5' to 40' is not warranted. While there may be an increasing use of 40' poles, there is not sufficient evidence in the Whitepaper to justify a change in the presumptive pole height. The current 37.5' presumption is rebuttable. So, individual owners or controllers of poles may seek authority to base rates on a different average pole height based upon that owner's individual mix of poles in each height classification. Alternatively, the Commission may consider a re-census of current stocks of poles from all major electric and incumbent telecommunications carriers to determine whether the existing presumption warrants change. Absent more complete facts, a change in the average pole height presumption is not warranted.

2. Usable Space.

The Whitepaper proposes a change in the presumed average usable space from 13.5' on a presumed average 37.5' pole to 11' on a 40' pole. Again, as with pole height, there is not sufficient evidence in the Whitepaper to justify the change proposed. Also, the usable space is a rebuttable presumption from which individual owners may seek variance if their situations fall unacceptably outside the presumptions. Further, Ameritech disagrees with aspects of the computation of the usable space of a pole as presented in the Whitepaper. The Whitepaper assumes that 19.8' of space is required to meet National Electrical Safety Code ("NESC") mid-span clearance requirements. The current NESC, as Ameritech understands it, requires mid-span street crossing clearances of 15.5' which can be met with attachments lower than 19.8'. In light of this, the current Commission presumption of 18' is not unreasonable and doesn't warrant change.

⁷ Notice, Pars. 18 and 20.

3. Exclusion of 30' Poles.

The Commission seeks comment on inclusion of 30' poles in the rate formula and the lack of usable space on such poles.⁸ There is no reason to remove these poles from the formula. This height pole is not uncommon for construction of pole lines for the sole use of telecommunications carriers, and can create 6' or more of usable space for attachment. Further, in backyard applications (common in older neighborhoods) where NESC clearances are lower, 30' poles do provide adequate space for attachments of third parties.⁹ Therefore, there is no reason to exclude poles of this height from the formula.

C. Pole Rental Fees Paid by Telephone Companies Should not be Categorically Excluded from the Rate Formula.

The Commission seeks comment on its proposal to subtract certain pole rental expenses incurred by incumbent local exchange carriers from the Maintenance Carrying Charge Rate portion of the formula.¹⁰ The appropriateness of the inclusion or exclusion of these expenses depends upon their purpose and the rights acquired by the incumbent carrier as a result of the payment. Payments for space for attachments actually used by the incumbent carrier and not subleaseable are not properly included in the formula. However, when these payments are to acquire space on a pole which the incumbent carrier has the right to sublease, then these payments are properly included as costs to the incumbent carrier to acquire space which it can and must make available to other attaching parties. In most instances, the appropriateness will depend upon the nature of the relationship between the incumbent carrier and the power company. But even in those joint use arrangements

⁸ Notice, Par 20.

⁹ For instance, in its joint ownership agreement with Commonwealth Edison, Ameritech Illinois and Commonwealth Edison are each assigned 4' of space on 30' poles placed in Chicago. This allocation provides space for third party attachments.

¹⁰ Notice, Par. 33.

where such expenses reflect true rentals for space by the incumbent carrier from the power company, and the joint use agreement permits the power company to obtain the attachment fee from another attaching party for attachments in space rented by the incumbent, it is still appropriate to include these expenses in the incumbent's rates, because the incumbent is giving up the right to use its rented space without direct compensation. In such instances, it may be more appropriate to adjust the power company's maintenance component to exclude such rentals received. Accordingly, and because the appropriateness of inclusion or exclusion will depend upon the circumstance of each case, a general rule of exclusion is not appropriate. Rather, where an attaching party believes inclusion is inappropriate, the Commission's complaint jurisdiction can be invoked to address matters that cannot be agreed between the parties.

D. The Commission's Proposals and Tentative Conclusions Regarding Conduit Attachment Issues Are Generally Reasonable.

In Part IV of the Notice, the Commission invites comment on several issues relating to attachment rates for use of utility and incumbent carrier conduit. In general, Ameritech supports the Commission's proposals and tentative conclusions, subject to the comments below.

1. Telecommunications Carrier/Electric Company Conduit Differences.

The Commission seeks comment on differences between the conduits of telecommunications carriers and those of electric utilities.¹¹ As Ameritech understands the NESC, communications conductors could not occupy the same duct as electric cables, though communications conductors could occupy ducts in a concrete conduit which has other ducts occupied by electric cables. However, it may be possible that non-conducting fiber optic cables could share a duct with an electrical cable, presuming there is space to

¹¹ Notice, Par. 43.

do so and access and safety provisions are met. It is unclear to Ameritech whether the 1/2 duct convention is appropriate for electric conduit. But presuming electrical conduit ducts are similar to telecommunications conduit ducts, it would seem that there would not be differences that would require disparate treatment of electrical conduit from telecommunication conduit in the rate formula, presumptions or administration.

2. Distribution of Usable and Unusable Space.

The Commission seeks comment on the distribution of usable and unusable space within a duct or conduit.¹² The Commission proposes to reduce the average number of ducts in a conduit by ducts reserved for other uses, and, therefore, unusable for the attachments of the incumbent carrier or other telecommunications carriers or cable television systems.

In conduit systems owned or controlled by incumbent carriers, all ducts are considered usable except ducts reserved for maintenance or for use by the municipality or property owner with control over the right-of-way in which the conduit is located.

Ameritech believes it is appropriate to reserve a full duct and an inner duct for maintenance purposes¹³ for all users of the conduit system. An inner duct and full duct are necessary and appropriate because of the mixed technologies - fiber and copper cables - present in most conduit systems. A full duct is required for all but the smallest of copper cables, whereas even the largest fiber cables can be accommodated in an inner duct. Reservation of a full duct and an inner duct permits fiber and copper maintenance operations to be conducted simultaneously, rather than seriatim. Under the Commission's 1/2 duct convention, this would result in a subtraction of 1 1/2 ducts from the average number of ducts per conduit in the rate formula.

¹² Notice, Par 43.

¹³ Maintenance purposes include non-emergency use of the maintenance ducts for replacement of defective or obsolete cables and use of the maintenance ducts for replacements due to cable cuts or other emergencies. Priority of use of maintenance ducts during emergencies is currently a matter of discussion among Ameritech and conduit users.

Similarly, many franchise agreements and ordinances obligate the incumbent telecommunications carrier to make available or reserve a duct for use by the municipality. Less commonly, private owners of property on which conduit is located may also require a reservation of a duct for the owner as a condition of the right to use the privately owned land. As these are burdens that the incumbent carrier must bear in order to deploy conduit, and because such reserved ducts are unavailable for use by the incumbent carrier as well as other users, it is appropriate that such ducts be excluded from the average number of available ducts in a conduit. Accordingly, Ameritech suggests that the Commission presume that one duct per conduit is considered reserved for municipal or private property owner use and so reduce the average number of ducts per conduit in the formula by an additional one duct.

Ameritech's interconnection agreements, statements of generally available terms and tariffs are consistent with the above positions.

3. The Half-Duct Presumption.

The Commission seeks comment on its proposed presumptions that an attaching party occupies a half-duct and that the half-duct approach is an appropriate, simple and administratively efficient means to develop rates for conduit occupancy.¹⁴

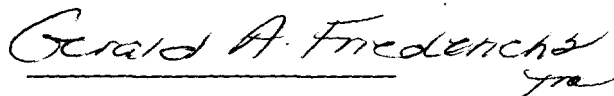
Ameritech agrees that the half-duct presumption is a reasonable and efficient means to develop conduit rates. It is industry practice to provide access to conduit in inner-duct (half-duct) increments. Full ducts are available when needed by an attaching party and are priced at the rate of two half-ducts. These conventions are well understood and accepted by parties seeking occupancy of Ameritech ducts.

¹⁴ Notice, Pars. 44 and 46.

CONCLUSION

While generally supportive of the Commission's proposals in the Notice, Ameritech respectfully requests that the Commission consider its comments herein. The proposals made in the electric owners' Whitepaper for which the Commission sought comment ought not to be adopted without additional justification. The Commission should refrain from presumptively excluding incumbent carrier pole rental charges from the pole attachment rate formula. The Commission's proposal on development of a simple, efficient conduit rate formula should be adopted, with the exceptions for reserved space outlined in these comments.

Respectfully submitted,

A handwritten signature in cursive script, reading "Gerald A. Friederichs", with a horizontal line underneath and a small flourish at the end.

Gerald A. Friederichs
Attorney for the Ameritech Operating Companies
30 S. Wacker Drive, 39th Floor
Chicago IL 60606
312-750-5827

Dated June 27, 1997